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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/532,036	04/21/2005	Rene Grawe	WAS0692PUSA	8562
22045	7590	01/25/2008	EXAMINER	
BROOKS KUSHMAN P.C. 1000 TOWN CENTER TWENTY-SECOND FLOOR SOUTHFIELD, MI 48075			SANDERS, KRIELLION ANTIONETTE	
			ART UNIT	PAPER NUMBER
			1796	
			MAIL DATE	DELIVERY MODE
			01/25/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/532,036

**Applicant(s)**

GRAWE ET AL.

**Examiner**

Kriellion A. Sanders

**Art Unit**

1796

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 11-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>4/05, 1/07</u> . | 6) <input type="checkbox"/> Other: ____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 11-29 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Eck et al US 5,753,733.

Eck et al discloses a powder composition which is redispersible in water and comprises a water-insoluble polymer of ethylenically unsaturated monomers, one or more organosilicon compounds and, optionally additives.

The dispersible powder composition is obtainable by emulsion polymerization of one or more monomers selected from the group consisting of vinyl esters of unbranched or branched alkylcarboxylic acids having 1 to 15 C atoms; of methacrylic acid esters and acrylic acid esters of unbranched or branched alcohols having 1 to 12 C atoms; of fumaric and/or maleic acid mono- or diesters of unbranched or branched alcohols having 1 to 12 C atoms; of dienes, and of olefins, it being possible for the dienes to be copolymerized, of vinyl aromatics, and of vinyl halogen compounds.

Preferred vinyl esters are vinyl acetate, vinyl propionate, vinyl butyrate, vinyl 2-ethylhexanoate, vinyl laurate, 1-methylvinyl acetate, vinyl pivalate and vinyl esters of branched monocarboxylic acids having up to 10 C atoms.

Preferred methacrylic acid esters or acrylic acid esters are methyl acrylate, methyl methacrylate, ethyl acrylate, ethyl methacrylate, propyl acrylate, propyl methacrylate, n-butyl acrylate, t-butyl acrylate, n-butyl methacrylate, t-butyl methacrylate, 2-ethylhexyl acrylate. Methyl acrylate, methyl methacrylate, n-butyl acrylate and 2-ethylhexyl acrylate are particularly preferred.

Preferred ester groups of fumaric and maleic acid are the methyl, ethyl, n-propyl, isopropyl, n-butyl, isobutyl, t-butyl, hexyl, ethylhexyl and dodecyl group.

Patentee indicates that the vinyl ester copolymers may comprise 1.0 to 65% by weight, based on the total weight of the comonomer phase, of alpha-olefins, such as ethylene or propylene, and/or vinyl aromatics, such as styrene, and/or vinyl halides, such as vinyl chloride, and/or acrylic acid esters or methacrylic acid esters of alcohols having 1 to 10 C atoms, such as methyl acrylate, methyl methacrylate, ethyl acrylate, ethyl methacrylate, propyl acrylate, propyl methacrylate, n-butyl acrylate, t-butyl acrylate, n-butyl methacrylate, t-butyl methacrylate and 2-ethylhexyl acrylate and/or ethylenically unsaturated dicarboxylic acid esters or derivatives thereof, such as diisopropyl fumarate, the dimethyl, methyl t-butyl, di-n-butyl, di-t-butyl and diethyl esters of maleic acid or fumaric acid, or maleic anhydride.

Patentee also indicates that the (meth)acrylic acid ester copolymers may comprise 1.0 to 65% by weight, based on the total weight of the comonomer phase, of alpha-olefins, such as ethylene or propylene, and/or vinyl aromatics, such as styrene, and/or vinyl halides, such as vinyl

chloride, and/or ethylenically unsaturated dicarboxylic acid esters or derivatives thereof, such as diisopropyl fumarate, the dimethyl, methyl butyl, dibutyl and diethyl esters of maleic acid or fumaric acid, or maleic anhydride,.

Patentee indicates that protective colloids are preferably employed in amounts of up to 15% by weight, based on the total weight of the monomers. Examples of the protective colloids are vinyl alcohol/vinyl acetate copolymers having a content of 80 to 100 mol % of vinyl alcohol units; polyvinylpyrrolidones having a molecular weight of 5,000 to 400,000; hydroxyethylcelluloses having a degree of substitution range from 1.5 to 3; polysaccharides in water-soluble form, such as starches (amylose and amylopectin), cellulose, guar, tragacanthic acid, dextran, alginates and carboxymethyl, methyl, hydroxyethyl and hydroxypropyl derivatives thereof; proteins, such as casein, soya protein and gelatine a synthetic polymers, such as poly(meth)acrylic acid, poly(meth)acrylamide, polyvinylsulphonic acids and water-soluble copolymers thereof; and melamine-formaldehydesulphonates, naphthalene-formaldehydesulphonates, and styrene/maleic acid and vinyl ether/maleic acid copolymers.

Additionally, patentee indicates that the pH range desired for the polymerization, which is in general between 2.5 and 10, preferably 3 and 8, can be established in a known manner by acids, bases or customary buffer salts, such as alkali metal phosphates or alkali metal carbonates. To establish the molecular weight, regulators such as aldehydes may be used. Therefore the use of the aldehydes and acidic or basic compounds of applicant's claims 20-22 and 26- 29 are obvious if not anticipated.

The patented dispersion powder compositions may be employed in typical fields of use, for example, in chemical building products in hydraulically setting binders, such as cements

(Portland, aluminate, trass, Hullen, magnesia or phosphate cement), gypsum or water-glass, for the preparation of building adhesives, plasters, stopper compositions, flooring stopper compositions, joint mortars and paints.

Example 1 of the patent discloses Hoppler viscosity values that overlap with those of applicant's claims and reads as follows:

A solution of 6400 g of vinyl acetate, 320 g of isooctyltriethoxysilane and 7 g of methaeryloxypropyltriethoxysilane was emulsified into a solution of 524 g of a polyvinyl alcohol having a Hoppler viscosity of 4 mpas (in a 4% strength solution at 20.degree. C.) and a hydrolysis number of 140 in 4890 g of water in an 18 l autoclave. 1480 g of ethylene were forced in and polymerization was carried out at 50.degree. C. with the redox catalyst system of 26 g of potassium persulphate (3% strength aqueous solution) and 13 g of Bruggolit (Na formaldehyde-sulphoxylate; 1.5% strength aqueous solution in the course of 4 hours. A dispersion having a solids content of 57% resulted.

See col. 1, line 55 through col. 6, line 62 and col. 8, lines 34-67.

Eck et al indicates that the components of the presently claimed jointing compositions are well known in the art . It would have been obvious if not fully anticipatory to select any of the disclosed components and utilize those components in the amounts and by following the process steps of Eck et al to derive a dispersible powder jointing composition.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kriellion A. Sanders whose telephone number is 571-272-1122. The examiner can normally be reached on Monday through Thursday 8:30am-7:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read 'Kriellion A. Sanders', with a stylized, flowing script.

Kriellion A. Sanders  
Primary Examiner  
Art Unit 1796

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